

**Agreement between the Government of the United States of America and the  
Government of [FATCA Partner] for Cooperation to Facilitate the Implementation of  
FATCA**

Whereas, the Government of the United States of America and the Government of [FATCA Partner] (each, a “Party,” and together, the “Parties”) desire to conclude an agreement to improve their cooperation in combating international tax evasion;

Whereas, the United States of America enacted provisions commonly known as the Foreign Account Tax Compliance Act (“FATCA”), which introduce a reporting regime for financial institutions with respect to certain accounts;

Whereas, the Government of [FATCA Partner] is supportive of the underlying policy goal of FATCA to improve tax compliance;

Whereas, FATCA has raised a number of issues, including that [FATCA Partner] financial institutions may not be able to comply with certain aspects of FATCA due to domestic legal impediments;

Whereas, intergovernmental cooperation to facilitate FATCA implementation would address these issues and reduce burdens for [FATCA Partner] financial institutions;

Whereas, the Parties desire to conclude an agreement to provide for cooperation to facilitate the implementation of FATCA based on direct reporting by [FATCA Partner] financial institutions to the U.S. Internal Revenue Service, supplemented by the exchange of information upon request, subject to the confidentiality and other protections provided for herein, including the provisions limiting the use of the information exchanged;

Now, therefore, the Parties have agreed as follows:

**Article 1  
Definitions**

1. For purposes of this agreement and any annexes thereto (“Agreement”), the following terms shall have the meanings set forth below:

- (a) The term **“United States”** means the United States of America, including the States thereof, but does not include the U.S. Territories. Any reference to a **“State”** of the United States includes the District of Columbia.<sup>1</sup>
- (b) The term **“U.S. Territory”** means American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, the Commonwealth of Puerto Rico, or the U.S. Virgin Islands.
- (c) The term **“IRS”** means the U.S. Internal Revenue Service.

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<sup>1</sup> [The United States prefers not to include a geographic description of the parties as this is unnecessary.]

- (d) The term “[**FATCA Partner**]” means [full name of FATCA Partner][, including \_\_\_\_][, but not including \_\_\_\_].<sup>2</sup>
- (e) The term “[**Partner Jurisdiction**]” means a jurisdiction that has in effect an agreement with the United States to facilitate the implementation of FATCA. The IRS shall publish a list identifying all Partner Jurisdictions.
- (f) The term “[**Competent Authority**]” means:
  - 1) in the case of the United States, the Secretary of the Treasury or his delegate; and
  - 2) in the case of [FATCA Partner], [ ].<sup>3</sup>
- (g) The term “[**Financial Institution**]” means a Custodial Institution, a Depository Institution, an Investment Entity, or a Specified Insurance Company.
- (h) The term “[**Foreign Reportable Amount**]” means, in accordance with relevant U.S. Treasury Regulations, a payment of fixed or determinable annual or periodical income that would be a withholdable payment if it were from sources within the United States.
- (i) The term “[**Custodial Institution**]” means any Entity that holds, as a substantial portion of its business, financial assets for the account of others. An entity holds financial assets for the account of others as a substantial portion of its business if the entity’s gross income attributable to the holding of financial assets and related financial services equals or exceeds 20 percent of the entity’s gross income during the shorter of: (i) the three-year period that ends on December 31 (or the final day of a non-calendar year accounting period) prior to the year in which the determination is being made; or (ii) the period during which the entity has been in existence.
- (j) The term “[**Depository Institution**]” means any Entity that accepts deposits in the ordinary course of a banking or similar business.
- (k) The term “[**Investment Entity**]” means any Entity that conducts as a business (or is managed by an entity that conducts as a business) one or more of the following activities or operations for or on behalf of a customer:
  - 1) trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.); foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading;
  - 2) individual and collective portfolio management; or

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<sup>2</sup> [The United States prefers not to include a geographic description of the parties as this is unnecessary; an example of a political definition is “Mexico means the United Mexican States.”]

<sup>3</sup> [Include the FATCA Partner Competent Authority.]

- 3) otherwise investing, administering, or managing funds or money on behalf of other persons.

This subparagraph 1(k) shall be interpreted in a manner consistent with similar language set forth in the definition of “financial institution” in the Financial Action Task Force Recommendations.

- (l) The term “**Specified Insurance Company**” means any Entity that is an insurance company (or the holding company of an insurance company) that issues, or is obligated to make payments with respect to, a Cash Value Insurance Contract or an Annuity Contract.
- (m) The term “[**FATCA Partner**] **Financial Institution**” means (i) any Financial Institution [resident in]/[organized under the laws of]<sup>4</sup> [**FATCA Partner**], but excluding any branch of such Financial Institution that is located outside [**FATCA Partner**], and (ii) any branch of a Financial Institution not [resident in]/[organized under the laws of] [**FATCA Partner**], if such branch is located in [**FATCA Partner**].
- (n) The term “**Partner Jurisdiction Financial Institution**” means (i) any Financial Institution established in a Partner Jurisdiction, but excluding any branch of such Financial Institution that is located outside the Partner Jurisdiction, and (ii) any branch of a Financial Institution not established in the Partner Jurisdiction, if such branch is located in the Partner Jurisdiction.
- (o) The term “**Reporting [**FATCA Partner**] Financial Institution**” means any [**FATCA Partner**] Financial Institution that is not a Non-Reporting [**FATCA Partner**] Financial Institution.
- (p) The term “**Non-Reporting [**FATCA Partner**] Financial Institution**” means any [**FATCA Partner**] Financial Institution, or other Entity resident in [**FATCA Partner**], that is described in Annex II as a Non-Reporting [**FATCA Partner**] Financial Institution or that otherwise qualifies as a deemed-compliant FFI or an exempt beneficial owner under relevant U.S. Treasury Regulations [in effect on the date of signature of this Agreement].<sup>5</sup>
- (q) The term “**Nonparticipating Financial Institution**” means a nonparticipating FFI, as that term is defined in relevant U.S. Treasury Regulations, but does not include a [**FATCA Partner**] Financial Institution or other Partner Jurisdiction Financial Institution other than a Financial Institution treated as a Nonparticipating Financial Institution pursuant to paragraph 2 of Article 4 of

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<sup>4</sup> [Select the appropriate classification for Financial Institutions to be treated as FATCA Partner Financial Institutions, either based on their place of residence or place of organization. This decision is usually made based on the appropriate concept under FATCA Partner’s tax laws, and where there is no such concept, the legal organization test is generally chosen.]

<sup>5</sup> [Some of our partner jurisdictions have expressed the need for a static definition of Non-Reporting FATCA Partner Financial Institution, even though we believe that a dynamic approach is preferred to provide flexibility. The bracketed language has been included to accommodate jurisdictions that have a need for a static definition.]

this Agreement or the corresponding provision in an agreement between the United States and a Partner Jurisdiction.

- (r) The term “**New Account**” means a Financial Account opened by a Reporting [FATCA Partner] Financial Institution on or after July 1, 2014.
- (s) The term “**U.S. Account**” means a Financial Account maintained by a Reporting [FATCA Partner] Financial Institution and held by one or more Specified U.S. Persons or by a Non-U.S. Entity with one or more Controlling Persons that is a Specified U.S. Person. Notwithstanding the foregoing, an account shall not be treated as a U.S. Account if such account is not identified as a U.S. Account after application of the due diligence procedures in Annex I.
- (t) The term “**Non-Consenting U.S. Account**” means a Financial Account maintained by a Reporting [FATCA Partner] Financial Institution as of June 30, 2014 with respect to which (i) a Reporting [FATCA Partner] Financial Institution has determined that it is a U.S. Account in accordance with the due diligence procedures in Annex I, (ii) the laws of [FATCA Partner] prohibit the reporting required under an FFI Agreement absent consent of the Account Holder, (iii) the Reporting [FATCA Partner] Financial Institution has sought, but was unable to obtain, the required consent to report or the Account Holder’s U.S. TIN; and (iv) the Reporting [FATCA Partner] Financial Institution has reported, or was required to report, aggregate account information to the IRS as prescribed under sections 1471 to 1474 of the U.S. Internal Revenue Code and relevant U.S. Treasury Regulations.
- (u) The term “**Financial Account**” has the meaning set forth in relevant U.S. Treasury Regulations, but does not include any account that is excluded from the definition of Financial Account in Annex II.
- (v) The term “**FFI Agreement**” means an agreement that sets forth the requirements, consistent with this Agreement, for the Reporting [FATCA Partner] Financial Institution to be treated as complying with the requirements of section 1471(b) of the U.S. Internal Revenue Code.
- (w) The term “**Account Holder**” means the person listed or identified as the holder of a Financial Account by the Financial Institution that maintains the account. A person, other than a Financial Institution, holding a Financial Account for the benefit or account of another person as agent, custodian, nominee, signatory, investment advisor, or intermediary, is not treated as holding the account for purposes of this Agreement, and such other person is treated as holding the account. For purposes of the immediately preceding sentence, the term “Financial Institution” does not include a Financial Institution organized or incorporated in a U.S. Territory. In the case of a Cash Value Insurance Contract or an Annuity Contract, the Account Holder is any person entitled to access the Cash Value or change the beneficiary of the contract. If no person can access the Cash Value or change the beneficiary, the Account Holder is any person named as the owner in the contract and any person with a vested entitlement to payment under the terms of the contract. Upon the maturity of a Cash Value Insurance Contract or an Annuity Contract, each person entitled to

receive a payment under the contract is treated as an Account Holder.

- (x) The terms “**Cash Value Insurance Contract**” and “**Annuity Contract**” have the meanings set forth in relevant U.S. Treasury Regulations.
- (y) The term “**U.S. Person**” means a U.S. citizen or resident individual, a partnership or corporation organized in the United States or under the laws of the United States or any State thereof, a trust if (i) a court within the United States would have authority under applicable law to render orders or judgments concerning substantially all issues regarding administration of the trust, and (ii) one or more U.S. persons have the authority to control all substantial decisions of the trust, or an estate of a decedent that is a citizen or resident of the United States. This subparagraph 1(y) shall be interpreted in accordance with the U.S. Internal Revenue Code.
- (z) The term “**Specified U.S. Person**” means a U.S. Person, other than: (i) a corporation the stock of which is regularly traded on one or more established securities markets; (ii) any corporation that is a member of the same expanded affiliated group, as defined in section 1471(e)(2) of the U.S. Internal Revenue Code, as a corporation described in clause (i); (iii) the United States or any wholly owned agency or instrumentality thereof; (iv) any State of the United States, any U.S. Territory, any political subdivision of any of the foregoing, or any wholly owned agency or instrumentality of any one or more of the foregoing; (v) any organization exempt from taxation under section 501(a) of the U.S. Internal Revenue Code or an individual retirement plan as defined in section 7701(a)(37) of the U.S. Internal Revenue Code; (vi) any bank as defined in section 581 of the U.S. Internal Revenue Code; (vii) any real estate investment trust as defined in section 856 of the U.S. Internal Revenue Code; (viii) any regulated investment company as defined in section 851 of the U.S. Internal Revenue Code or any entity registered with the U.S. Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a-64); (ix) any common trust fund as defined in section 584(a) of the U.S. Internal Revenue Code; (x) any trust that is exempt from tax under section 664(c) of the U.S. Internal Revenue Code or that is described in section 4947(a)(1) of the U.S. Internal Revenue Code; (xi) a dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any State; (xii) a broker as defined in section 6045(c) of the U.S. Internal Revenue Code; or (xiii) any tax-exempt trust under a plan that is described in section 403(b) or section 457(g) of the U.S. Internal Revenue Code.
- (aa) The term “**Entity**” means a legal person or a legal arrangement such as a trust.
- (bb) The term “**Non-U.S. Entity**” means an Entity that is not a U.S. Person.
- (cc) An Entity is a “**Related Entity**” of another Entity if either Entity controls the other Entity, or the two Entities are under common control. For this purpose, control includes direct or indirect ownership of more than 50 percent of the vote or value in an Entity. Notwithstanding the foregoing, [FATCA Partner]

may treat an Entity as not a Related Entity of another Entity if the two Entities are not members of the same expanded affiliated group as defined in section 1471(e)(2) of the U.S. Internal Revenue Code.

- (dd) The term “**U.S. TIN**” means a U.S. federal taxpayer identifying number.
- (ee) The term “**Controlling Persons**” means the natural persons who exercise control over an Entity. In the case of a trust, such term means the settlor, the trustees, the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust, and in the case of a legal arrangement other than a trust, such term means persons in equivalent or similar positions. The term “Controlling Persons” shall be interpreted in a manner consistent with the Financial Action Task Force Recommendations.

2. Any term not otherwise defined in this Agreement shall, unless the context otherwise requires or the Competent Authorities agree to a common meaning (as permitted by domestic law), have the meaning that it has at that time under the law of the Party applying this Agreement, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

## **Article 2**

### **Reporting and Exchange of Information**

1. **Directive to [FATCA Partner] Financial Institutions.** [FATCA Partner] shall direct and enable all Reporting [FATCA Partner] Financial Institutions to:

- a) register on the IRS FATCA registration website with the IRS by July 1, 2014, and comply with the requirements of an FFI Agreement, including with respect to due diligence, reporting, and withholding;
- b) with respect to Financial Accounts maintained by Reporting [FATCA Partner] Financial Institutions as of June 30, 2014 identified as U.S. Accounts,
  - (i) request from each Account Holder the Account Holder’s U.S. TIN and consent to report [and simultaneously inform the Account Holder in writing that, if the U.S. TIN and consent are not given, (1) aggregate information about the account shall be reported to the IRS, (2) information about the account may give rise to a group request by the IRS for specific information about the account, (3) in such case, the account information shall be transmitted to the [FATCA Partner] tax administration, and (4) the [FATCA Partner] tax administration may exchange this information with the IRS in accordance with paragraph 2 of this Article];<sup>6</sup>
  - (ii) report annually to the IRS, in the time and manner required by an FFI Agreement and relevant U.S. Treasury Regulations, the aggregate information required with respect to Non-Consenting U.S. Accounts;

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<sup>6</sup> [The bracketed language would be included in agreements with jurisdictions where such notification is required.]

- c) with respect to accounts of, or obligations to, Nonparticipating Financial Institutions that exist as of June 30, 2014, and in connection with which the Reporting [FATCA Partner] Financial Institution expects to pay a Foreign Reportable Amount,
  - (i) with respect to calendar years 2015 and 2016, request from each such Nonparticipating Financial Institution the Nonparticipating Financial Institution's consent to report [and simultaneously inform the Nonparticipating Financial Institution in writing that, if such consent is not given, (1) aggregate information about Foreign Reportable Amounts paid to the Nonparticipating Financial Institution shall be reported to the IRS, (2) such information may give rise to a group request by the IRS for specific information about the account or obligation, (3) in such case, the information about the account or obligation shall be transmitted to the [FATCA Partner] tax administration, and (4) the [FATCA Partner] tax administration may exchange this information with the IRS in accordance with paragraph 2 of this Article];<sup>7</sup>
  - (ii) with respect to calendar years 2015 and 2016, report to the IRS the number of non-consenting Nonparticipating Financial Institutions to which Foreign Reportable Amounts were paid during the year and the aggregate value of all such payments no later than March 15 of the year following the year to which the information relates;
- d) with respect to New Accounts identified as U.S. Accounts, obtain from each Account Holder consent to report, consistent with the requirements of an FFI Agreement, as a condition of account opening; and
- e) with respect to new accounts opened by, or obligations entered into with, a Nonparticipating Financial Institution on or after July 1, 2014, and in connection with which the Reporting [FATCA Partner] Financial Institution expects to pay a Foreign Reportable Amount, obtain from each such Nonparticipating Financial Institution consent to report, consistent with the requirements of an FFI Agreement, as a condition of opening the account, or entering into the obligation.

## 2. **Exchange of Information.**

- a) In the context of FATCA implementation, the U.S. Competent Authority may make group requests to the [FATCA Partner] Competent Authority based on the aggregate information reported to the IRS pursuant to the directive described in subparagraphs 1(b)(ii) and 1(c)(ii) of this Article, for all the information about Non-Consenting U.S. Accounts and Foreign Reportable Amounts paid to Nonparticipating Financial Institutions that the Reporting [FATCA Partner] Financial Institution would have had to report under an FFI Agreement had it obtained consent.

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<sup>7</sup> [See footnote 6.]

- b) The U.S. Competent Authority may also make follow-up requests to the [FATCA Partner] Competent Authority for additional information with respect to a Non-Consenting U.S. Account, including the account statements prepared in the ordinary course of the Reporting [FATCA Partner] Financial Institution's business that summarize the activity (including withdrawals, transfer, and closures) of the account.
- c) The [FATCA Partner] Competent Authority shall provide to the U.S. Competent Authority the information requested by the U.S. Competent Authority pursuant to subparagraphs 2(a) and 2(b) of this Article without regard to whether the [FATCA Partner] Competent Authority needs such information for its own tax purposes or whether the information relates to the investigation of conduct that would constitute a crime under the laws of [FATCA Partner] if such conduct occurred in [FATCA Partner]. If the information in the possession of the [FATCA Partner] Competent Authority is not sufficient to enable it to comply with the request for information, the [FATCA Partner] Competent Authority shall use all relevant information gathering measures to provide the U.S. Competent Authority with the information requested. Privileges under the laws and practices of the United States shall not apply in the execution of a request by the [FATCA Partner] Competent Authority and the availability and application of any such privileges shall be solely the responsibility of the United States.
- d) With respect to a group request from the U.S. Competent Authority described in subparagraph 2(a) of this Article, the [FATCA Partner] Competent Authority shall, within six months of the receipt of the group request, provide the U.S. Competent Authority with all such requested information in the same format in which the information would have been reported if it had been reported directly to the IRS by the Reporting [FATCA Partner] Financial Institution. The [FATCA Partner] Competent Authority shall notify the U.S. Competent Authority and the relevant Reporting [FATCA Partner] Financial Institution if there will be any delay in the exchange of the requested information. In such case, the provisions of subparagraph 2(b) of Article 3 of this Agreement shall apply with respect to the Reporting [FATCA Partner] Financial Institution, and the [FATCA Partner] Competent Authority must exchange the requested information with the U.S. Competent Authority as soon as possible.
- e) Notwithstanding subparagraph 2(a) of this Article, the [FATCA Partner] Competent Authority is not required to obtain and exchange the U.S. TIN of the Account Holder of a Non-Consenting U.S. Account if such U.S. TIN is not in the records of the Reporting [FATCA Partner] Financial Institution. In such a case, the [FATCA Partner] Competent Authority shall obtain and include in the exchanged information the date of birth of the relevant person, if the Reporting [FATCA Partner] Financial Institution has such date of birth in its records.
- f) Requests pursuant to subparagraphs 2(a) and 2(b) of this Article shall apply to information for the time period beginning on or after the date of signature of this Agreement.



### **Article 3**

#### **Application of FATCA to [FATCA Partner] Financial Institutions**

1. **Treatment of Reporting [FATCA Partner] Financial Institutions.** Subject to the provisions of paragraph 2 of Article 4 of this Agreement, each Reporting [FATCA Partner] Financial Institution that registers with the IRS on the IRS FATCA registration website and complies with the terms of an FFI Agreement shall be treated as complying with the requirements of, and as not subject to withholding under, section 1471 of the U.S. Internal Revenue Code.
  
2. **Suspension of Rules Relating to Non-Consenting U.S. Accounts.**
  - a) Subject to subparagraph 2(b) of this Article, the United States shall not require a Reporting [FATCA Partner] Financial Institution to withhold tax under section 1471 or 1472 of the U.S. Internal Revenue Code with respect to an account held by a recalcitrant account holder (as defined in section 1471(d)(6) of the U.S. Internal Revenue Code), or to close such account, if:
    - (i) the Reporting [FATCA Partner] Financial Institution complies with the directives in paragraph 1 of Article 2 of this Agreement with respect to the account; and
    - (ii) the [FATCA Partner] Competent Authority exchanges with the U.S. Competent Authority the requested information described in subparagraph 2(a) of Article 2 of this Agreement within six months from the date of the receipt of such request.
  - b) If the condition of subparagraph 2(a)(ii) of this Article is not fulfilled, the Reporting [FATCA Partner] Financial Institution shall be required to treat the account as held by a recalcitrant account holder as defined in relevant U.S. Treasury Regulations, including by withholding tax where required by those U.S. Treasury Regulations, beginning on the date that is six months after the date of the receipt of the request described in subparagraph 2(a) of Article 2 of this Agreement and ending on the date on which the [FATCA Partner] Competent Authority exchanges the requested information with the U.S. Competent Authority.
  
3. **Specific Treatment of [FATCA Partner] Retirement Plans.** The United States shall treat as deemed-compliant FFIs or exempt beneficial owners, as appropriate, for purposes of sections 1471 and 1472 of the U.S. Internal Revenue Code, [FATCA Partner] retirement plans described in Annex II. For this purpose, a [FATCA Partner] retirement plan includes an Entity established or located in, and regulated by, [FATCA Partner], or a predetermined contractual or legal arrangement, operated to provide pension or retirement benefits or earn income for providing such benefits under the laws of [FATCA Partner] and regulated with respect to contributions, distributions, reporting, sponsorship, and taxation.
  
4. **Identification and Treatment of Other Deemed Compliant FFIs and Exempt Beneficial Owners.** The United States shall treat each Non-Reporting [FATCA Partner] Financial Institution as a deemed-compliant FFI or as an exempt beneficial owner, as appropriate, for purposes of section 1471 of the U.S. Internal Revenue Code.

5. **Special Rules Regarding Related Entities and Branches That Are Nonparticipating Financial Institutions.** If a [FATCA Partner] Financial Institution, that otherwise meets the requirements described in Article 2 of this Agreement or is described in paragraph 3 or 4 of this Article, has a Related Entity or branch that operates in a jurisdiction that prevents such Related Entity or branch from fulfilling the requirements of a participating FFI or deemed-compliant FFI for purposes of section 1471 of the U.S. Internal Revenue Code or has a Related Entity or branch that is treated as a Nonparticipating Financial Institution solely due to the expiration of the transitional rule for limited FFIs and limited branches under relevant U.S. Treasury Regulations, such [FATCA Partner] Financial Institution shall continue to be treated as a participating FFI, deemed-compliant FFI, or exempt beneficial owner, as appropriate, for purposes of section 1471 of the U.S. Internal Revenue Code, provided that:

- a) the [FATCA Partner] Financial Institution treats each such Related Entity or branch as a separate Nonparticipating Financial Institution and each such Related Entity or branch identifies itself to withholding agents as a Nonparticipating Financial Institution;
- b) each such Related Entity or branch identifies its U.S. accounts and reports to the IRS the information with respect to those accounts as required under section 1471 of the U.S. Internal Revenue Code to the extent permitted under the relevant laws pertaining to the Related Entity or branch; and
- c) such Related Entity or branch does not specifically solicit U.S. accounts held by persons that are not resident in the jurisdiction where such Related Entity or branch is located or accounts held by Nonparticipating Financial Institutions that are not established in the jurisdiction where such Related Entity or branch is located, and such Related Entity or branch is not used by the [FATCA Partner] Financial Institution or any other Related Entity to circumvent the obligations under this Agreement or under section 1471 of the U.S. Internal Revenue Code, as appropriate.

6. **Coordination of Definitions with U.S. Treasury Regulations.** Notwithstanding Article 1 of this Agreement and the definitions provided in the Annexes to this Agreement, in implementing this Agreement, [FATCA Partner] may use, and may permit [FATCA Partner] Financial Institutions to use, a definition in relevant U.S. Treasury Regulations in lieu of a corresponding definition in this Agreement, provided that such application would not frustrate the purposes of this Agreement.

#### **Article 4** **Verification and Enforcement**

1. **Minor and Administrative Errors.** Consistent with the terms of an FFI Agreement, the U.S. Competent Authority may make an inquiry directly to a Reporting [FATCA Partner] Financial Institution where it has reason to believe that administrative errors or other minor errors may have led to incorrect or incomplete information reporting inconsistent with the requirements of an FFI Agreement. [The competent authority agreement or arrangement may provide that the U.S. Competent Authority would notify the [FATCA Partner] Competent Authority when the U.S. Competent Authority makes such an inquiry of a Reporting [FATCA

Partner] Financial Institution regarding the Reporting [FATCA Partner] Financial Institution's compliance with the conditions set forth in this Agreement.]<sup>8</sup>

2. **Significant Non-Compliance.** The U.S. Competent Authority shall notify the [FATCA Partner] Competent Authority when the U.S. Competent Authority has determined that there is significant non-compliance with the requirements of an FFI Agreement or this Agreement with respect to a Reporting [FATCA Partner] Financial Institution. If the non-compliance is not resolved within a period of 12 months after notification of significant non-compliance is first provided by the U.S. Competent Authority, the United States shall treat the Reporting [FATCA Partner] Financial Institution as a Nonparticipating Financial Institution pursuant to this paragraph 2.

3. **Competent Authority [Consultation]/[Agreement or Arrangement].** [The Competent Authorities of [FATCA Partner] and the United States may consult on notified cases of significant non-compliance pursuant to paragraph 2 of this Article.]/[The Competent Authorities of [FATCA Partner] and the United States shall enter into an agreement or arrangement under the mutual agreement procedure provided for in Article 7 of this Agreement which shall:

- a) establish the procedures for the exchange of information described in paragraph 2 of Article 2 of this Agreement; and
- b) prescribe rules and procedures as may be necessary to implement this Article.]<sup>9</sup>

4. **Reliance on Third Party Service Providers.** In accordance with the provisions of an FFI Agreement and relevant U.S. Treasury Regulations, Reporting [FATCA Partner] Financial Institutions may use third party service providers to fulfill the requirements of an FFI Agreement, but these requirements shall remain the responsibility of the Reporting [FATCA Partner] Financial Institutions.

## [Article 5

### **Mutual Commitment to Continue to Enhance the Effectiveness of Information Exchange and Transparency**

1. **Treatment of Passthru Payments and Gross Proceeds.** The Parties are committed to work together, along with Partner Jurisdictions, to develop a practical and effective alternative approach to achieve the policy objectives of foreign passthru payment and gross proceeds withholding that minimizes burden.

2. **Development of Common Reporting and Exchange Model.** The Parties are committed to working with Partner Jurisdictions and the Organisation for Economic Co-operation and Development on adapting the terms of this Agreement and other agreements

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<sup>8</sup> [Consider whether the competent authority agreement or arrangement should provide for this notification described in the bracketed language.]

<sup>9</sup> [Consider whether the Competent Authorities want to consult on cases of significant non-compliance or enter into an agreement or arrangement prescribing the rules and procedures to implement Art. 4 and the procedures for exchange of information described in para. 2 of Art. 2.]

between the United States and Partner Jurisdictions to a common model for automatic exchange of information, including the development of reporting and due diligence standards for financial institutions.]<sup>10</sup>

### **Article 6** **Consistency in the Application of FATCA to Partner Jurisdictions**

1. [FATCA Partner] shall be granted the benefit of any more favorable terms under Article 3 or Annex I of this Agreement relating to the application of FATCA to [FATCA Partner] Financial Institutions afforded to another Partner Jurisdiction under a signed bilateral agreement pursuant to which the other Partner Jurisdiction commits to undertake the same obligations as [FATCA Partner] described in Article 2 of this Agreement, and subject to the same terms and conditions as described therein and in Articles 4, 6, 9, and 10 of this Agreement.
2. The United States shall notify [FATCA Partner] of any such more favorable terms, and such more favorable terms shall apply automatically under this Agreement as if such terms were specified in this Agreement and effective as of the date of the entry into force of the agreement incorporating the more favorable terms, unless [FATCA Partner] declines the application thereof.

### **Article 7** **Mutual Agreement Procedure**

1. Where difficulties or doubts arise between the Parties regarding the implementation, application, or interpretation of this Agreement, the Competent Authorities shall endeavor to resolve the matter by mutual agreement.
2. The Competent Authorities may adopt and implement procedures to facilitate the implementation of this Agreement.
3. The Competent Authorities may communicate with each other directly for purposes of reaching a mutual agreement under this Article.

### **Article 8** **Confidentiality**

1. The [FATCA Partner] Competent Authority shall treat any information received from the United States pursuant to paragraph 2 of Article 2 and Article 4 of this Agreement as confidential and shall only disclose such information as may be necessary to carry out its obligations under this Agreement. Such information may be disclosed in connection with court proceedings related to the performance of the obligations of [FATCA Partner] under this Agreement.
2. Information provided to the U.S. Competent Authority pursuant paragraph 2 of Article 2 and Article 4 of this Agreement shall be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) of the Government of the

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<sup>10</sup> [Consider whether to include this Art. 5.]

United States concerned with the assessment, collection, or administration of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, U.S. federal taxes, or the oversight of such functions. Such persons or authorities shall use such information only for such purposes. Such persons may disclose the information in public court proceedings or in judicial decisions. The information may not be disclosed to any other person, entity, authority, or jurisdiction. Notwithstanding the foregoing, where [FATCA Partner] provides prior, written consent, the information may be used for purposes permitted under the provisions of a mutual legal assistance treaty in force between the Parties that allows for the exchange of tax information.

## **Article 9** **Consultations and Amendments**

1. In case any difficulties in the implementation or interpretation of this Agreement arise, either Party may, independently of the mutual agreement procedure described in paragraph 1 of Article 7 of this Agreement, request consultations to develop appropriate measures to ensure the fulfillment of this Agreement.
2. This Agreement may be amended by written mutual agreement of the Parties. Unless otherwise agreed upon, such an amendment shall enter into force through the same procedures as set forth in paragraph 1 of Article 11 of this Agreement.

## **Article 10** **Annexes**

The Annexes form an integral part of this Agreement.

## **Article 11** **Term of Agreement**

1. This Agreement shall enter into force on the date of [FATCA Partner]'s written notification to the United States that [FATCA Partner] has completed its necessary internal procedures for entry into force of this Agreement.
2. Either Party may terminate this Agreement by giving notice of termination in writing to the other Party. Such termination shall become effective on the first day of the month following the expiration of a period of 12 months after the date of the notice of termination.
3. If this Agreement is terminated, both Parties shall remain bound by the provisions of Article 8 of this Agreement with respect to any information obtained under this Agreement.

In witness whereof, the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

Done at [\_\_\_\_], in duplicate, in the English and [FATCA Partner] languages,<sup>11</sup> both texts being equally authentic, this [\_\_] day of [\_\_\_\_], 20[\_\_].

FOR THE GOVERNMENT OF THE  
UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF [FATCA  
PARTNER]:

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<sup>11</sup> [Note that it is possible to sign in English, with an official FATCA Partner language version agreed at a later date. This permits signature at an earlier date and was the approach taken by Switzerland.]